THE HONOURABLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION No.12013 OF 2006

DATED: 22.10.2007

Between:

K. Lakshminarayana Reddy

.. Petitioner

And

The District Collector,
Anantapur and others

.. Respondents

THE HONOURABLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION No.12013 OF 2006

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ORDER:

This Court issued Rule Nisi on 16.06.2006.

2. Heard the learned counsel for writ petitioner and the learned Government Pleader for Civil Supplies.

3. The learned counsel for the writ petitioner had taken this Court through the affidavit filed in support of the writ petition and would submit that no reasonable or proper opportunity had been given to the petitioner and hence the impugned order suffers from the infirmity of non-compliance of the principles of natural justice.

4. The learned Government Pleader for Civil Supplies, however, would submit that as far as power of review is concerned, such power is not conferred by the relevant control orders. The learned Government Pleader also would maintain that though opportunities had been given, the same had not been availed by the writ petitioner. Hence, in the light of the facts and circumstances, the writ petition, being devoid of merit, is liable to be dismissed.

5. The writ petition is filed for a Writ of Mandamus declaring the orders in D.Dis.No.K4/ATP/500/2005, dated 08.08.2005, and in R.C.No.K4-ATP/1405/04, dated 20.01.2005, passed by the 1st respondent – District Collector, Anantapur, confirming the order of the

2nd respondent – Joint Collector, Anantapur, dated 08.01.2003, and the order of the 3rd respondent- Revenue Divisional Officer, Anantapur, dated 28.12.1996, as arbitrary and illegal; and consequently to set aside the same.

6. It is stated by the writ petitioner in the affidavit filed in support of the writ petition that he was appointed as fair price shop dealer of Narsapuram village, Narpala Mandal of Anantapur District, and ever since the date of appointment, he was distributing the essential commodities to the satisfaction of all the card holders. It is further stated that on the ground that he had committed certain irregularities in the distribution of essential commodities, the Revenue Divisional Officer, on the basis of the report submitted by the Mandal Revenue Officer, had issued a show cause notice, dated 24.06.1996, framing seven charges against him. It is also stated that the charges are that the petitioner had not distributed the rice, sugar and kerosene to certain card holders and that he had made false entries in the kerosene issue register as if the kerosene had been issued and that he was distributing the essential commodities one or two days after receipt of quota and also weighing less the commodities. Further, the other charges are that he was residing in Narpala village instead of Narsapuram village and creating trouble to the card holders to get the essential commodities regularly and that the Headmaster of P.S. Elementary School had reported that the petitioner had not handed over the allotted quota rice under the nutrition programme to the school going children for the month from January to May 1996. It is also stated that after receipt of show cause notice, the petitioner engaged an advocate, who filed Vakalat on the date of hearing and sought for time, and he was informed that the next date of hearing would be

given. But, without giving any notice with regard to the posting of the case, the 3rd respondent had passed an order cancelling the authorization of the petitioner on the ground that he had failed to give explanation to the charges levelled against him. It is also further stated that the 3rd respondent, except stating that the charges levelled against the petitioner are grave in nature and the petitioner had failed to offer his explanation, had not given any findings with regard to each of the charge that had been levelled against him. It is also further stated that aggrieved by the order of the 3rd respondent, the petitioner had filed an appeal before the Joint Collector. It was specifically contended that the charges that had been levelled against him are false. The appeal was posted for hearing on 04.12.2002 and on that date, on the ground that the counsel for the petitioner was absent, the case was reserved for orders. It is also stated that the 2nd respondent, on perusing the grounds of appeal and after extracting the charges framed against the petitioner, had passed an order confirming the order of the 3rd respondent on the ground that the petitioner had failed to submit his explanation. It is also further stated that aggrieved by the said order, the petitioner had filed a further revision before the 1st respondent - District Collector and that the main contention urged before the District Collector was that the petitioner was not given sufficient opportunity before passing the order of cancellation. The 1st respondent had dismissed the revision on the ground that the advocate, who filed Vakalat, had not filed the explanation nor had appeared before the appellate authority as well as the revisional authority. It is further stated that thereafter the petitioner had filed an application for review of the order that had been passed and the same also had been dismissed on the ground that there is no provision for

review of the order that had been passed. It is also further stated that the order of the 1st respondent, confirming the orders of the 2nd and 3rd respondent, is illegal, arbitrary and in violation of principles of natural justice. Further, it is stated that the 3rd respondent had issued a show cause notice framing seven charges against the petitioner. After receipt of the said show cause notice, the petitioner was under a bonafide impression that a further notice would be issued informing the date of hearing and, as no notice was served on him, he was not present and that the 3rd respondent had passed the order cancelling the authorization only on the ground that neither the petitioner nor his counsel had attended the hearing and filed the explanation. It is also further stated that the 3rd respondent had not given any independent finding with regard to the charges that have been levelled against the petitioner and cancelled the authorization of the petitioner. It is further stated that in the appeal that had been filed before the appellate authority, the petitioner had submitted detailed explanation denying the charges levelled against him, but the appellate authority, without considering the same, confirmed the order of the 2nd respondent only on the ground that the advocate for the petitioner was absent. It is also stated that without properly adverting to the pleas that had been taken before it, the revisional authority had confirmed the orders passed by the 2nd and 3rd respondents. It is specifically stated that the order of the 1st respondent is illegal and invalid. Further, it is stated that before the 1st and 2nd respondents, it was specifically contended that no notice was given and the petitioner was not given an opportunity to deny the charges levelled against him. Though the said contentions had been raised, the 2nd respondent had not given any finding on the said contentions and had passed the impugned order. It

is further stated that the 2nd respondent, being the appellate authority, ought to have considered the said pleas and ought to have remanded the matter to the 3rd respondent. It is also further stated that the order passed by the 3rd respondent as confirmed by the 1st and2nd respondents is not legal and valid and that the 3rd respondent had cancelled the authorization of the petitioner only on the ground that the petitioner had not submitted the explanation. It is further stated that there was no material on record to hold that the petitioner had contravened the provisions of the control order. It is also further stated that the impugned order passed by the 1st respondent confirming the orders of the 2nd and 3rd respondents is not legal and valid. Under such circumstances, the petitioner approached this Court filing the present writ petition.

7. In the counter-affidavit filed by the 1st respondent, it is stated that the contention of the writ petitioner made in paragraph 2 of the affidavit filed in support of the writ petition is not correct. It is also stated that as seen from the records, the writ petitioner was issued suspension-cum-show cause notice, dated 24.06.1996, vide Rc.No.DICS/966/96, by the Revenue Divisional Officer, Anantapur, based on the enquiry report of the Mandal Revenue Office, Narpala in Rc.No.A/249/96, dated 19.06.2006. It is also further stated that the writ petitioner was also directed to file his explanation for the charges framed against him on the date of hearing i.e. on 20.07.1996, but on that date, his counsel had filed Vakalat only. Neither the advocate nor the dealer had filed any explanation even after lapse of six months. Hence, the Revenue Divisional Officer, Anantapur had passed final orders cancelling the F.P. Shop authorization held by the petitioner, vide proceedings in

D.Dis.No.D1CS/966/96, dated 28.12.1996. Further, in reply to the averments made in paragraph 3 of the affidavit filed in support of the writ petition, it is stated that the contention of the writ petitioner made in the said paragraph is not correct. It is also stated that the appeal, which was filed by the writ petitioner before the Joint Collector, Anantapur against the orders of the Revenue Divisional Officer, Anantapur, was finally heard on 04.12.2002 by the Joint Collector after several adjournments. It is further stated that even on the final day of hearing i.e. on 04.12.2002, neither the counsel for the appellant-writ petitioner nor the appellant were present. Considering the same, the Joint Collector, Anantapur, had dismissed the appeal, confirming the orders of the Revenue Divisional Officer, and that against the orders of the Joint Collector, the writ petitioner had filed a revision before the Collector, Anantapur. The Collector, Anantapur, had disposed of the revision vide order in Rc.No.K4/ATP/1405/2004 dated 20.01.2005, confirming the orders of the Joint Collector, by analyzing the circumstances of the case with an observation that there is no reason to interfere with the status existing after such long time and no further action is required. Thereupon, the writ petitioner had filed a petition through his counsel before the District Collector, Anantapur, seeking review of the order, dated 20.01.2005. On that, the petitioner was informed through an endorsement vide D.Dis.No.K4/ATP/500/2004, dated 08.08.2005, that there is no provision to the revisional authority under A.P.P.D.S. Control Order, 2001 to review or reconsider the orders once passed by the Collector as revisional authority on the revision. It is also stated that there is no illegality as contended by the writ petitioner. Further, it is stated that though the writ petitioner was issued with show cause notice directing him to appear for personal hearing and file explanation for the charges framed against him on

20.07.1996, he could not avail the same and even his counsel, who filed vakalath on 20.07.1996, had not argued the case and filed any explanation, and hence the case was disposed of by the Revenue Divisional Officer, Anantapur, on 28.12.1996, after a period of six months. It is further stated that as regards appeal, though the writ petitioner denied the charges in his grounds of appeal, his advocate was called absent for final hearing on 04.12.2002 even at the time of appeal also. Considering the circumstances of the case and keeping in view the gravity of charges, the Joint Collector, Anantapur had disposed of the appeal, confirming the order of the Revenue Divisional Officer, Anantapur. It is also further stated that as regards revision filed by the writ petitioner before the Collector, Anantapur, against the orders of the Joint Collector, Anantapur, the Collector had analyzed the circumstances of the case in right aspect, while taking the plea of the writ petitioner into consideration, and passed order, dated 20.01.2005, confirming the order of the Joint Collector/Revenue Divisional Officer, Anantapur. Further, it is stated that it is a fact that at the stage of lower Court i.e. the Revenue Divisional Officer, Anantapur, though the writ petitioner was given reasonable opportunity of personal hearing, he could not avail the same. The Revenue Divisional Officer, Anantapur, had passed orders cancelling the F.P. Shop authorization of the writ petitioner, while giving the finding that though the writ petitioner was given reasonable opportunity he had not utilized the same. It is also stated that since the charges are grave in nature and the dealer failed to offer his explanation even after a lapse of six months, it was construed that he had no explanation to offer. It is further stated that considering the circumstances of the case, the Joint Collector, as appellate authority, had confirmed the order of the Revenue Divisional Officer, Anantapur, and the District Collector, as

revisional authority, had confirmed the order of the Joint Collector and, hence, there is no violation of principles of natural justice as contended by the writ petitioner. It is also stated that in this case, the Revenue Divisional Officer, Anantapur, had cancelled the F.P. shop authorization of the writ petitioner considering the gravity of charges and not exclusively based on the ground that the writ petitioner had not submitted his explanation. Further, it is stated that considering the facts of the case and also in accordance with law, the Joint Collector and District Collector had passed orders confirming the order of the Revenue Divisional Officer and there is no illegality in their action. Certain further averments had been made even in paragraph 7 of the counter-affidavit.

8. Specific stand had been taken that in a case of this nature the power of review had not been conferred on the concerned authorities under the relevant Control Orders.

9. As can be seen from the averments made in the affidavit filed in support of the writ petition and also the counter-affidavit, the writ petitioner is asserting that no opportunity had been given to him; whereas in the counter-affidavit, specific stand had been taken that the opportunities given to the writ petitioner had not been availed of by him.

10. Be that as it may, in the light of the facts and circumstances, this Court is of the considered opinion that one more opportunity to be given to the writ petitioner. In the peculiar facts and circumstances, let the 3rd respondent- Revenue Divisional Officer, Anantapur, to fix a date and conduct an enquiry in accordance with law. Further, since it is complained that though several opportunities had been given, the

petitioner had not availed the same, it is made clear that no further opportunity would be given and on the date fixed by the 3rd respondent – Revenue Divisional Officer, Anantapur, the petitioner is bound to appear and avail the opportunity given.

11. With the above directions, the writ petition is disposed of. No order as to costs.

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(**P.S.NARAYANA,J)**

22nd October, 2007.

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